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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,410	11/12/2003	Jerry Joe Wolfe JR.	102-1189	6794
7590 J. Nevin Shaffer, Jr. Suite 43 913 Gulf Breeze Parkway Gulf Breeze, FL 32561		08/22/2007	EXAMINER SMITH, KIMBERLY S	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 08/22/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/706,410		WOLFE ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kimberly S. Smith		3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13,15-17 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 15-17, 19-21, 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

1. The indication of allowable subject matter in the prior Office Action has been rescinded in light of the new grounds of rejection. The Examiner apologizes for any inconvenience.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 13, 16, 17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham, US Patent 6,439,166 in view of Rucker, US Patent 6,634,318 in view of Costello, US Patent 6,148,771.

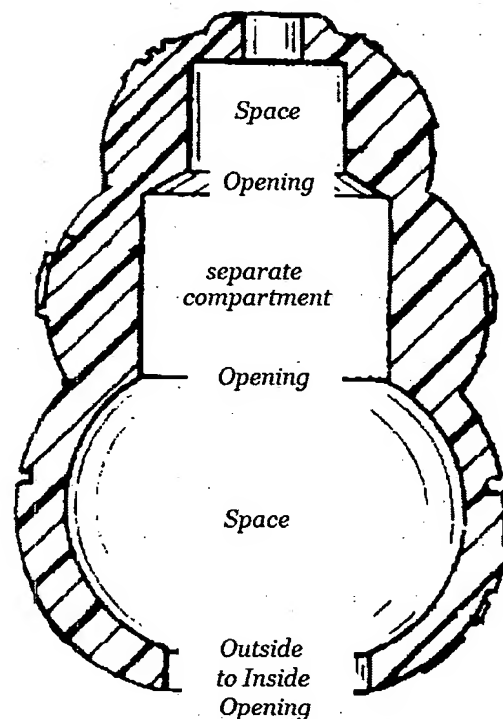
Markham discloses a ball (reference instant specification page 6 defining a ball to be inclusive of cylindrical, oblong or the like) with an outside and an inside including a separate

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compartment having two openings and an opening from the outside to the inside of the ball (reference inserted Figure), wherein the separate compartment is offset from a center location of the ball (as the center location being defined as the midpoint of the ball from the top to the bottom). However, Markham does not disclose a removable edible cap in the at least one opening. Rucker teaches within the same field of endeavor the use of a removable edible cap for closing an opening so as to contain the treats within the toy for a longer period of time thereby increasing the length of time for enjoying the toy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cap as taught by Rucker with the apparatus of Markham so as to prolong the enjoyment for the animal. Markham in view of Rucker further does not teach the use of a flap limiting the size of an opening. Costello teaches flaps (41) so as to

maintain treats within the interior of the compartment for an extended period of time. It would have been obvious to one having ordinary skill in the art to use the flaps as taught by Costello with the apparatus of Markham so as to prolong the enjoyment of the animal using the toy.

Regarding claim 17, Markham discloses the use of a funnel section (i.e. the funnel located between the top space and the separate compartment) but does not disclose a second funnel section in the second opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a second funnel section in the second opening,

**Fig. 2**

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since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 21, Markham as modified discloses the invention substantially as claimed but does not positively recite the cap is domed shaped. It would have been an obvious matter of design choice to make the cap domed shape, since Applicant has not disclosed that the dome shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any shaped cap.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markham, US Patent 6,439,166 in view of Rucker, US Patent 6,634,318 in view of Costello, US Patent 6,148,771 as applied to claim 13 above, and further in view of McEvoy, IE 82913 B3.

Markham as modified discloses the invention substantially as claimed. However, Markham as modified does not disclose the use of a sinuous edge on the ball. McEvoy teaches within the analogous art of balls, the use of a sinuous raised edge to augment the normal path of the ball. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the sinuous raised edge as taught by McEvoy with the apparatus of Markham as modified so as to augment the natural path of a ball to make a more enticing ball.

6. Claims 24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham, US Patent 6,439,166 in view of Rucker, US Patent 6,634,318.

Markham discloses a ball (reference instant specification page 6 defining a ball to be inclusive of cylindrical, oblong or the like) with an outside and an inside including a separate compartment having two openings and an opening from the outside to the inside of the ball (reference inserted Figure above), wherein the separate compartment is offset from a center

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location of the ball (as the center location being defined as the midpoint of the ball from the top to the bottom). However, Markham does not disclose a removable edible cap in the at least one opening. Rucker teaches within the same field of endeavor the use of a removable edible cap for closing an opening so as to contain the treats within the toy for a longer period of time thereby increasing the length of time for enjoying the toy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cap as taught by Rucker with the apparatus of Markham so as to prolong the enjoyment for the animal.

Regarding claim 27, Markham discloses the use of a funnel section (i.e. the funnel located between the top space and the separate compartment) but does not disclose a second funnel section in the second opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a second funnel section in the second opening, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 28, Markham as modified discloses the invention substantially as claimed but does not positively recite the cap is domed shaped. It would have been an obvious matter of design choice to make the cap domed shape, since Applicant has not disclosed that the dome shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any shaped cap.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markham in view of Rucker as applied to claim 24 above, and further in view of McEvoy.

Markham as modified discloses the invention substantially as claimed. However, Markham as modified does not disclose the use of a sinuous edge on the ball. McEvoy teaches

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within the analogous art of balls, the use of a sinuous raised edge to augment the normal path of the ball. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the sinuous raised edge as taught by McEvoy with the apparatus of Markham as modified so as to augment the natural path of a ball to make a more enticing ball.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kimberly S Smith  
Primary Examiner  
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